

**CAPITAL PROJECTS ADVISORY REVIEW BOARD
REAUTHORIZATION COMMITTEE**

MINUTES - DRAFT

Thursday, June 11, 2020 1:00 – 3:00 pm

Members present: **Chair:** Rebecca Keith (WA Cities)
Vice-Chair: Robynne Thaxton (Private Industry)
Loren Armstrong (WA Ports), Janet Jansen (DES), Santosh Kuruvilla (Engineers), Scott Middleton (Specialty Contractors), Mike Pellitteri (General Contractors), Lisa Van der Lugt (OMWBE), Olivia Yang (Higher Ed); Howard Hillinger (Construction Management); Eric Nordstrom (Counties); Neil Hartman (WA Building Trades)

Others present: Nancy Deakins (DES), Bill Dobyms (General Contractors), Andy Thompson (CPARB - General Contractors), Walter Schacht (CPARB Chair), Dan Seydel (Platinum Business Group, Small Business), Melissa Van Gorkom (Staff to WA Legislature), Rex Brown (OMWBE); Steve Goldblatt (University of Washington); Aleanna Kondelis (University of Washington); Quinn Dolan (Centennial Contractors)

Committee Task: Achieve reauthorization of RCW 39.10

1:00 pm

Welcome and Introductions

Meeting convenes 1:00 pm

Rebecca affirms there is quorum.

Approve agenda

DECISION: Approve agenda with no changes. Robynne moves to approve agenda. Janet seconds. All approve. No objections.

Review and approve meeting notes from May 1, 2020 – Rebecca Keith

DECISION: Approve minutes as distributed. Rebecca Keith moves to approve. Scott Middleton seconds. All approve. No objections.

1:15

JOC proposals from Gordian Meeting
Quinn Dolan

- RCW 39.10.210. Coefficient definition. Needed to re-define as a numerical factor and not a markup
 - Rebecca. Some issues need to be shifted to best practices. Different contractors include different elements in the coefficient, and we need to have clarity in the procurement.
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- Quinn: Gives the owner the ability to define what it wants to be included in the coefficient.
- RCW 39.10.210. strike “negotiated, definitive” from (9).
- RCW 39.20.210 (20). Delete “the costs of”, “including” and “ing costs” from definition of Unit Price book” – mainly clean up, keep ‘may’ because owner can make choices between division of what is in coefficient or which divisions of price book are used. Committee needs to address detail in best practices.
- RCW 39.10.430.
 - (3)
 - (d) Add “and a description of which elements shall be included in the coefficient as necessary to establish a firm fixed price on work orders to be awarded under the job order contract.”
 - (f) Replace “price” with “coefficient.
 - (j) Replace “project” with “contract”.
 - (4)
 - Replace “final proposals, including sealed bids based on the identified unit price book” with “sealed bids including but not limited to coefficient(s).
 - Replace “markups from” with “adjustments to the”
 - Add “unit” before “price”.
 - Delete “costs”.
 - (9) delete this subparagraph (cleanup)
- Dan Seydel raised a question regarding requiring bonds and their possible limiting effects.
- Rebecca
 - Helpful that Gordian came to the table and will continue work on best practices. They were supportive of limited changes that need to be in the bill.
- Robynne moved, Janet seconded to accept changes to JOC statute as set forth in the document titled RCW Gordian Changes 12.16.19 + Proposed changes meeting 51320, attached at Attachment 1 to the minutes.

DECISION: Approve changes to JOC statute as set forth in RCW Gordian Changes 12.16.19 + Proposed changes meeting 51320 [Attachment 1]

1:46

Pre-engineered metal buildings

Walter

- He presented several suggestions to either narrowly define the term “pre-engineered metal buildings or delete it from the statute.
- Reviewed email proposals (Note, the information below is from Walter Schacht’s May 4, 2020 email)

The language of RCW 39.10.300 (3) states, “*The design-build procedure may be used for the construction or erection of portable facilities as defined in WAC 392-343-018, preengineered metal buildings, or not more than ten prefabricated modular buildings*”

per installation site, regardless of cost and is not subject to approval by the committee.”

Grouping “preengineered metal buildings” together with “portables” and “prefabricated modular buildings” indicates that the statutory provision is intended to allow the erection of factory-built structures that are designed and engineered by their manufacturer. These structures are typically permitted by Labor and Industries. The local jurisdiction is the permitting agency for the sitework only.

- In that case, the design-builder selection process would not typically involve a design competition and the scope of design services provided by the design-builder would be limited to the site. These highly simplified building types go hand-in-hand with a highly simplified procurement process that does not require PRC project approval.
- If a local building permit is required so that the design-builder must provide architectural, structural, mechanical and electrical services the level of complexity increases significantly and the public agency should be required to apply to the PRC for approval.

One solution would be to revise the statute so that all structures described in RCW 39.10.300 (3) are defined by either or both of the following WACs that address structures that are designed and engineered by their manufacturers:

- WAC 392-343-018, already cited in the provision for portables: <https://apps.leg.wa.gov/wac/default.aspx?cite=392-343-018>.
- WAC 296-150F for factory assembled housing and commercial structures: <https://app.leg.wa.gov/WAC/default.aspx?cite=296-150F>.

Another would be to add a new definition to RCW 39.10.210 such as,

- *“Preengineered metal buildings” means buildings where the primary and secondary structural members, and the cladding, are an integrated set of metal assemblies, which are designed and engineered by the manufacturer and manufactured in a manner that permits inspection of the assemblies prior to erection.*

That generally aligns with the definition of “Metal Building System” on the Metal Building Manufacturers Association’s website (<https://www.mbma.com>) that follows,

METAL BUILDING SYSTEM

An integrated set of components and assemblies, including but not limited to frames that are built-up structural steel members, secondary members that are cold-formed steel or steel joists, and cladding components, specifically designed to support and transfer loads and provide a complete or partial building shell. These

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components and assemblies are manufactured in a manner that permits plant and/or field inspection prior to assembly or erection.

Robynne:

- Noted objection to addressing this without engaging stakeholders, namely the pre-engineered metal building association.

Linneth

- Suggested that this is an issue to table for later.

Rebecca

- It is good to refine statute where we can; however, there was a small group to look at this and if people care strongly about an issue, they need to be the ones to shepherd it through.

Howard

- Would like to be part of discussion which should also include parking garages. It would seem that if we are looking at exemptions, we should examine all of them.
- The committee should engage with the PRC regarding what kinds of projects it should review.
- There is no process to confirm to an applicant that they are exempt.
- This is a broader question, and the committee is not prepared to take action on today.

Nancy

- The PRC hasn't had an issue with this previously.
- DES hasn't dealt with Pre-engineered Metal Building Association. To engage in this issue is too much of a political risk at this time.

Rebecca

- How would you engage the industry?

Walter:

- Pick up the phone and call the association.
- Walter noted that garages are different than pre-engineered metal buildings under 39.10.300(2). Public agencies are not exempted from going to PRC from going to parking garage.
- 16 years ago, when statute was limited to projects \$10M, statute was written to allow parking garages under \$10M.
- This is a different issue, which is to get the same level of certainty as to definition of pre-engineered metal building.

2:06

Break

2:20

Continue with agenda items.

Rebecca:

- There isn't a consensus on pre-engineered metal buildings.
- Is it necessary for re-authorization?

Howard

- It's a larger subject, and the PRC has questions regarding reporting back, etc.
- He has seen situations where there have been concerns about how approval has been managed by owner. It is not just an issue of pre-engineered metal buildings.
- How do we make the process accessible and responsible for smaller contractors/projects?
- It is not just a simple revision of a definition. Calls for representation by pre-engineered metal buildings, small cities with small projects. Not something he can recommend taking action today.

Rebecca:

- Proposes is to close this item out as a no action item.

Howard

- The Committee should add this issue to the issues to discuss with the PRC.
- There is a responsibility to protect design-build those entities who are willing to do the process using best practices and to be aware of the loophole.
- Unfortunately, he doesn't think the PRC can effectively review whether project is supposed to come before it or not. The PRC is not charged with that in the statute.

Group takes no action on this proposed change in the reauthorization statute but will explore it in the future with CPARB.

2:29

WSU proposal re: elimination of \$2 M threshold for DB

Olivia:

- Change, not to 39.10, but to WSU's RCW 28B.
 - WSU wants to have DB under \$2M. WSU has \$1.4B of maintenance work. It is difficult to provide DBB drawings and specs when trying to replace building automation system handlers. Collaboration and early engagement of all team members makes the most sense. WSU would prefer to leverage efficiencies for these projects.
 - In past the 5-7 years, WSU has had smaller contractors going after projects, but they have not been successful. There is a need to provide some training to them. WSU is also proposing to try to use DB as a way to help designers and builders to come together and be able to be successful.
 - This proposal addresses both an immediate business need but is also an attempt to increase the pool of DB contractors on a small scale. WSU wants to try it out on a smaller scale as an experiment.
 - There are issues WSU would like to explore. For example, there are issues on how contractors make money and manage risk on a small project.
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Rebecca:

- To be clear, the ask is that the Reauthorization Committee include this provision as a section in the bill that we are floating for 39.10. Has some strategic concerns about that.

Howard:

- What kind of feedback have you had from local industry?

Olivia:

- WSU met with their pool of contractors, both the larger and the smaller in Whitman county area who bid the DBB work, so there is interest. They recognize that WSU is an agency that has settled on a largely progressive form.
- It doesn't make sense to do a traditional or bridging process
- The reaction is that people are interested in trying it out. They are attracted to fact that WSU is willing to coach them before and debrief them afterward.

Howard:

- The language doesn't specifically mention selection or require that WSU adapt to industry concerns about business practices or cost.

Olivia:

- WSU is piggybacking on 39.10. WSU has always been a responsible public owner.
- They have talked to industry partners quite a bit on individual projects.
- WSU hosts DB conference.

Howard:

- Having best practices documents are helpful.

Janet:

- If the committee puts the provision into the reauthorization language, do we run any risk that it will get hung up, particularly with the last changes to the statute.

Olivia:

- Why WSU decided to put it into RCW 28B is that they are just asking for a little space to build up the DB pool. It won't switch completely from DBB to DB. Part of the initiative is to coach the firms.
- WSU does not have a very big office. WSU will probably do a few, learn from it, tweak, do a few more.

Linneth:

- By saying "all public works" does that limit flexibility?

Olivia:

- Referring to "all public works" as the pool and would then determine the delivery method.
- It's more a permission for all rather than a requirement.

Linneth

- Reading the statute as requiring WSU to utilize DB for “all public works”.

Howard

- “shall” utilize DB for “all public works”

Olivia

- We should go back and tweak that language

Rebecca

- Sees general support on the committee, but since the last meeting, in talking with the DES lobbyist, if we put in our bill a change to 28B in bill, we will have to include in the title.
- Might want to check with Dawn Cortez but as drafted this may imply that other higher ed institutions would have to have this provision to be able to use DB.

Olivia

- Proposing for 28B.30, which is WSU only.
- Comment raised by Linneth is a good one. Wants to talk with WSU lobbyist. Desire to make reauthorization as uneventful as possible.

Rebecca

- Requested comments from others.

Aleanna

- Has the CPARB higher ed representative been consulted.

Olivia

- Yes.

Aleanna

- Not sure whether UW wants to also have this type of authority.

Howard

- He is supportive of having a pilot authority.

Robynne

- Suggests tweaking the proposed statute revision and coming back.

Walter

- Put in front of small business equity subcommittee.

Nancy

- Would rather see it in 39.10.
- Would support a pilot within 39.10

Rebecca

- Next steps:
 - Olivia will discuss with legislative folks at WSU.
 - Walter will carry this issue forward to the business equity committee.

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- Rebecca will ask the DES legislative lobbyist advisor.
 - Olivia will review the language as discussed regarding the word “shall”.
 - Olivia will discuss with Nancy regarding including in RCW 39.10.
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- 2:58**
- Follow up:
- Legislative strategy
- Walter
- Rebecca, Andy, and Walter are starting a series of outreach activities with the CPARB legislative representatives. All seem to be interested in being sponsors.
 - They will continue to do that over the next month.
 - They will send them draft information to proposed changes after the Board meeting in September.
 - The response to what happens at the Board ranges from really good to extraordinarily positive.
 - There is interest in updating GC/CM statute regarding diversity.
 - There are no other concerning issues.
- Linneth
- In light of what is going on in the world, we need to be prepared to say that we looked during reauthorization of the RCW and made sure we that examined it from an equity viewpoint to see if anything needs to be changed to encourage equity across the board. We need to do our due diligence to make sure that the language is not causing problems.
- Rebecca
- When CPARB presented the DB statute (bill 1295), it did outreach to the minority and small business community. Those changes were also included in the GC/CM statute revisions committee adopted.
 - We should talk about further outreach.
- Walter
- The business equity committee goal is to review the statute. We should also understand the limited purview of the PRC.
- Rebecca
- Is there a meeting date for the business equity subcommittee?
- Walter
- Next week.
- Rebecca
- 4 substantive areas remain
 - Sunset
 - Small business
 - PRC feedback
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- WSU provisions

Howard

- Regarding outreach are we also looking for endorsements from the construction community?

Rebecca

- Yes, as well as people who will be in support of bill.
- CPARB has broad stakeholder representation.

Scott

- Regarding the bigger picture, it is good to have sponsors, but we also need to look at who will be the champion of the bill and make it a top priority.
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Meeting adjourned at 3:16 p.m.